

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/09-01/11

Date: 1 July 2016

TRIAL CHAMBER V(A)

Before: Judge Chile Eboe-Osuji, Presiding
Judge Olga Herrera Carbuca
Judge Robert Fremr

SITUATION IN THE REPUBLIC OF KENYA

**IN THE CASE OF
*THE PROSECUTOR v WILLIAM SAMOEI RUTO and JOSHUA ARAP SANG***

Public

Decision on the Requests regarding Reparations

Decision to be notified, in accordance with Regulation 31 of the *Regulations of the Court*, to:

The Office of the Prosecutor

Ms Fatou Bensouda

Mr James Stewart

Mr Anton Steynberg

Counsel for William Samoei Ruto

Mr Karim Khan

Mr David Hooper

Mr Essa Faal

Ms Shyamala Alagendra

Counsel for Joshua Arap Sang

Mr Joseph Kipchumba Kigen-Katwa

Ms Caroline Buisman

Legal Representatives of Victims

Mr Wilfred Nderitu

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

The Office of Public Counsel for Victims

Ms Paolina Massidda

**The Office of Public Counsel for the
Defence**

States Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Others

Trust Fund for Victims

Trial Chamber V(A) ('Chamber') of the International Criminal Court ('Court'), by Majority, Judge Eboe-Osuji dissenting, having regard to Article 64 of the Rome Statute ('Statute'), renders the following 'Decision on the Requests regarding Reparations'.

1. On 5 April 2016, in the case of *The Prosecutor v. William Samoei Ruto and Joshua Arap Sang* ('Ruto and Sang case'), the Chamber, by majority, vacated the charges against the accused and declared 'the accused discharged without prejudice to their prosecution afresh in future'.¹
2. On 2 May 2016, the counsel for Mr Ruto filed a request before the Chamber ('Ruto Request'),² which was joined by the counsel for Mr Sang on 10 May 2016.³
3. On 2 June 2016, the Chamber rendered the 'Decision on the Ruto Counsel's Request to appoint an Amicus Prosecutor' ('2 June Decision'),⁴ in which it unanimously concluded that:

the Chamber's majority decision of 5 April 2016 effectively terminated all trial proceedings against the accused. The 'case' of the Prosecutor v Mr William Samoei Ruto and Mr Joshua Arap Sang (case ICC-01/09-01/11) before Trial Chamber V(A) was [...] concluded by the decision of 5 April 2016, for all intents and purposes. In the circumstances, the Chamber considers it inappropriate to exercise jurisdiction on the merits of the application made by the Ruto Counsel.⁵
4. On 15 June 2016, the Legal Representative for Victims ('LRV') filed the 'Victims' Views and Concerns on the Issue of Reparation or Assistance in Lieu

¹ Decision on Defence Applications for Judgments of Acquittal, ICC-01/09-01/11-2027-Red ('5 April Decision'), page 1. A corrected version was filed on 16 June 2016, ICC-01/09-01/11-2027-Red-Corr.

² Ruto Defence request to appoint an *amicus* prosecutor, ICC-01/09-01/11-2028-Red, para 44.

³ Sang Defence Response to 'Ruto defence request to appoint an *amicus* prosecutor', ICC-01/09-01/11-2030. Responses by the Legal Representative for Victims and the Office of the Prosecutor were filed on 10 and 18 May 2016, respectively (Response of the Common Legal Representative for Victims to the 'Ruto Defence Request to Appoint an *Amicus* Prosecutor', ICC-01/09-01/11-2029-Conf; and Prosecution's response to the Defence requests to appoint an *amicus* prosecutor, ICC-01/09-01/11-2031-Red). On 26 May 2016, the counsel for Ruto filed the 'Defence Application for Leave to Reply to "Prosecution's response to the Defence requests to appoint an *amicus* prosecutor"', ICC-01/09-01/11-2032.

⁴ ICC-01/09-01/11-2034 with a public annex containing the Separate Further Opinion of Judge Eboe-Osuji.

⁵ 2 June Decision, ICC-01/09-01/11-2034, paras 9-10.

of Reparation Pursuant to the Trial Chamber Decision of 5 April 2016 on the Defence Motions on 'No Case to Answer' ('LRV Request').⁶ Therein, he requests the Chamber to: (i) find that the Government of Kenya bears an obligation to provide reparations to victims of the post-election violence ('PEV'); (ii) order the Trust Fund for Victims ('TFV') to provide assistance to victims of the PEV; and (iii) if need be, invite further submissions from the parties and participants, including the Government of Kenya and the TFV and give further directions on types and modalities of reparations or assistance.⁷

5. On 22 June 2016, the TFV filed a request to file observations to the LRV Request ('TFV Request').⁸
6. The Chamber, by majority, recalls that the Chamber already stated in the 2 June Decision that the case against Mr Ruto and Mr Sang has been terminated. Consequently, Trial Chamber V(A) is no longer seised of proceedings against those persons before the Court. Accordingly, this Chamber cannot take any decision on reparation matters related to the *Ruto and Sang* case under Article 75 of the Statute.⁹ Indeed, it is recalled that the LRV himself, in his response to the Ruto Request, stated that the Chamber lacked jurisdiction over that matter, which should have been filed 'prior to trial or during the course of the trial'.¹⁰

⁶ ICC-01/09-01/11-2035, with three public annexes 1 to 3.

⁷ ICC-01/09-01/11-2035, para. 54.

⁸ Request for leave to submit observations in relation to the issues raised under the heading "Questions concerning reparation" in the "Decision on Defence Applications for Judgments of Acquittal", ICC-01/09-01/11-2036.

⁹ See similarly, Reasons of Judge Fremr, ICC-01/09-01/11-2027-Red, para. 149, page 56, noting that '[a]s a result of the case ending without a conviction, no reparations order can be made by this Court pursuant to Article 75 for the benefit of victims of the post-election violence'.

¹⁰ ICC-01/09-01/11-2029-Conf, paras 9-13. Similarly, the Prosecution stated that the parties in the case against Mr Ruto and Mr Sang had no legal standing to bring a request, as the charges had been vacated. It also stated that the Chamber was no longer seised of the case and thus lacked jurisdiction. In the context of its submission, the Prosecution said any filing should be directed to the Pre-Trial Chamber. The Prosecution further stated that as there is no trial pending or trial before the Chamber, Article 64(6) of the Statute does not apply, as this provision cannot confer jurisdiction on the Chamber where no case exists. (ICC-01/09-01/11-2031-Red, paras 1 and 18).

7. In the LRV Request, the LRV requests the Chamber to play a role in ensuring that reparations awarded or assistance be given to the victims of the 2007/2008 post-electoral violence in Kenya.¹¹ However, the view that victims must be able to express their views and concerns on matters of reparations does not mean that this Chamber is the right forum to entertain such views and concerns. Indeed, there are no pending proceedings related to the harm allegedly suffered by the victims of the post-electoral violence before this Court, let alone this Chamber.¹² The Majority understands that while ‘this must be dissatisfactory to the victims, a criminal court can only address compensation for harm suffered as a result of crimes if such crimes have been found to have taken place and the person standing trial for his or her participation in those crimes is found guilty’.¹³

¹¹ The LRV stated that his filing was ‘consequential upon the invitation by the Presiding Judge [...] for victims to express their views and concerns in relation to reparation or assistance in lieu of reparations.’ ICC-01/09-01/11-2035, para. 1. The Majority notes that this statement was made in the context of the reasons for Judge Eboe Osuji only and did not represent the view of the whole Chamber.

¹² ICC-01/09-01/11-2027-Red, para. 149, page 56.

¹³ ICC-01/09-01/11-2027-Red, para. 149, page 56.

FOR THE FOREGOING REASONS THE CHAMBER, BY MAJORITY, HEREBY

DETERMINES that the LRV and the TFV no longer have standing to make requests before this Chamber in the context of the *Ruto and Sang* case; and

REJECTS the LRV Request and TFV Request *in limine*.

Judge Eboe-Osuji appends a dissenting opinion.

Done in both English and French, the English version being authoritative.

Judge Chile Eboe-Osuji, Presiding



Judge Olga Herrera Carbuccion



Judge Robert Fremr

Dated 1 July 2016

At The Hague, The Netherlands